

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO**

RUBEN J. ESCANO,

Plaintiff,

vs.

SYMMETRY FINANCIAL GROUP OF  
NORTH CAROLINA, LLC; and MUTUAL  
OF OMAHA INSURANCE COMPANY; and  
BRANDON ELLISON; and BRIAN POPE;  
and DOES 1 through 10;

Defendants.

Case No. \_\_\_\_\_

**JOINT NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1331, 1441(a), and 1446, Defendants Symmetry Financial Group of North Carolina, LLC (“Symmetry”), Brandon Ellison (“Ellison”), and Brian Pope (“Pope”), and Mutual of Omaha Insurance Company (“Mutual of Omaha”), by and through undersigned counsel, hereby remove this action, captioned RUBEN J. ESCANO v. SYMMETRY FINANCIAL GROUP OF NORTH CAROLINA; and MUTUAL OF OMAHA INSURANCE COMPANY; and BRANDON ELLISON; and BRIAN POPE; and DOES 1 through 10, Case No. D-608-CV-2021-229, from the Sixth Judicial District, Grant County, New Mexico to the United States District Court for the District of New Mexico. As grounds for removal, Defendants state as follows:

**BACKGROUND**

1. Plaintiff Ruben J. Escano (“Plaintiff”) filed his Complaint in the Sixth Judicial District Court, County of Grant, New Mexico on August 9, 2021, alleging that “Defendants and/or their agents initiated at least nineteen automatically-dialed and unsolicited telephone calls” to Mr. Escano regarding health and life insurance plans sold by Mutual of Omaha Insurance Company.

Compl. ¶¶ 13-21. Plaintiff alleges these calls violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”) and related regulations. Compl. ¶ 21.

2. Summons in the case were issued by the Sixth Judicial District Court on August 9, 2021 and served upon Defendant Symmetry on August 10, 2021 and Defendant Mutual of Omaha on August 11, 2021. Defendants Brandon Ellison and Brian Pope, partial owners of Symmetry Financial Group of North Carolina, have not been personally served. Defendants are required to answer or respond to Plaintiff’s Complaint within thirty (30) days of service.

3. Defendants Symmetry, Ellison, Pope, and Mutual of Omaha now seek to remove this case to the United States District Court for the District of New Mexico.

### **GROUND FOR REMOVAL**

#### **A. This action is removable because it raises questions of federal law.**

4. A civil action over which United States district courts have original jurisdiction may be removed by defendant(s) from the state court in which it was filed to the United States district court for the district “embracing the place where such action is pending.” 28 U.S.C. § 1441(a). This includes all civil actions “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

5. The presence or absence of a federal question for purposes of 28 U.S.C. § 1331 is governed by the well-pleaded complaint rule, which provides that removal is appropriate when a “federal question is presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar v. Williams*, 482 U.S. 386, 392 (1987).

6. In *Mims v. Arrow Financial Services*, 565 U.S. 368 (2012), the United States Supreme Court held that federal and state courts have concurrent jurisdiction over private lawsuits

arising under the TCPA. *Id.* at 372. The Court also suggested that because federal and state courts have concurrent jurisdiction over TCPA actions, TCPA cases are removable. *Id.* at 386 n. 15.

7. This Court has recently interpreted 28 U.S.C. §§ 1331, 1446 and *Mims* to allow for removal of TCPA cases on the basis of federal question jurisdiction. *Escano v. Concord Auto Protect, Inc.*, 2:21-cv-223-MV-CG, 2021 WL 2935295, at \*4 (D.N.M. July 13, 2021) (holding that removal of a TCPA case on the basis of federal question jurisdiction was proper).

8. Plaintiff's Complaint alleges numerous violations of the TCPA. Accordingly, this Court has jurisdiction over the case, and the case is properly removable to this Court.

**B. Defendants have met the procedural requirements for removal.**

9. Defendants have also met all procedural requirements for removal of this action.

10. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81.1(a), all known and available docket sheets, pleadings, processes, or orders served upon defendants have been attached as Exhibit B. A true and correct copy of the Complaint is attached separately as Exhibit A.

11. Pursuant to 28 U.S.C. § 1446(b)(1), this Notice of Removal is timely filed within thirty (30) days of service of the Complaint on Defendants, which occurred on August 10, 2021 for Symmetry and August 11, 2021 for Mutual of Omaha. Defendants Brandon Ellison and Brian Pope have not yet been personally served.

12. Pursuant to 28 U.S.C. § 1446(b)(2)(A), all known defendants, Symmetry, Ellison, Pope, and Mutual of Omaha consent to and join this notice.

13. Finally, pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be served upon and mailed to the Plaintiff, and a Notice of Filing of Removal, attached as Exhibit C, will be filed with the Sixth Judicial District Court, Grant County, New Mexico.

WHEREFORE, for the foregoing reasons, Defendants Symmetry Financial Group of North Carolina, LLC, Brandon Ellison, Brian Pope, and Mutual of Omaha Insurance Company respectfully remove this action from the Sixth Judicial District, Granite Count, New Mexico, to this Court pursuant to 28 U.S.C. §§ 1331, 1441(a), and 1446.

Dated: September 8, 2021

Respectfully submitted,

**HOLLAND & HART LLP**

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*Counsel for Symmetry Financial Group of North Carolina LLC, Brandon Ellison, and Brian Pope*

**CERTIFICATE OF SERVICE**

I, Jaime L. Dawes, hereby certify that this document was electronically filed and served using the Court's CM/ECF system on September 8, 2021. A copy of the foregoing was also mailed to the following:

Ruben Escano, *pro se*  
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/s/ Jaime L. Dawes  
Jaime L. Dawes